United Nations S/2003/127

Security Council

Distr.: General
31 January 2003

Original: English

Letter dated 28 January 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 4 October 2002 (S/2002/1160).

The Counter-Terrorism Committee has received the attached supplementary report from Nauru, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-24105 (E) 130203

Annex

Letter dated 8 January 2003 from the Permanent Representative of Nauru to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit herewith Nauru's response to the preliminary comment/question on the report submitted by the Government of Nauru, pursuant to your letter dated 27 September 2002. The document is annexed to the present letter (see enclosure).

(*Signed*) Vinci N. **Clodumar**
Ambassador
Permanent Representative

Enclosure

REPUBLIC OF NAURU

REPORT TO THE COUNTER-TERRORISM COMMITTEE (CTC) IN RESPONSE TO ITS LETTER OF 27 SEPTEMBER 2002-10-07

PARAGRAPH 1

□ **The Government of Nauru is able to comply with the provisions of paragraph 1 as follows:**

(a) Through its control of the only bank in Nauru the government is able to both prevent and suppress the financing of terrorist acts. This ability is assisted by the fact that at present the Bank of Nauru is inoperable internationally having no existing links with any international banking or other financial institutions. At present the export of more than AUD2,000 in cash from Nauru is prohibited without written approval of the Bank of Nauru.

(b) The government is considering draft legislation to insert a specific chapter in its criminal code dealing with terrorist acts although it is of the view that the criminal code is adequate to deal with any attempt by persons within the jurisdiction to conspire in any way with others to commit terrorist acts by way of the provision of money or kind. (A copy of the initial draft of this legislation is attached).

(c) Nauru is able (as mentioned) to instantly freeze assets of all kinds within its jurisdiction upon suspicion that they may be used by persons involved in or intending to be involved in terrorist acts whether those people are or are not within Nauru's jurisdiction, and to do so by ministerial fiat. Such action may only be temporary and require application to a Court for sanction and continuation of the freeze.

(d) As the government has the power to take action against persons suspected of attempting to make resources available for terrorist purposes by ministerial directive immediately the suspicion is aroused it is presently able to act without delay. However proposed amendments already mentioned may provide additional publicity of the available actions.

□ **Review under way.**

(a)–d) The review under way at present has involved the first draft of proposed legislation and is awaiting comments from legal and financial departments and others that consider their areas may be affected. The review is not, however, progressing as quickly as desired. This has been caused by a degree of political instability and movements of personnel as well as the shortage of qualified personnel on the Island to give the time to the review as well as normal duties. The government is now considering ways to overcome this difficulty and has spoken with officials of CTC with a view to obtaining assistance.

□ **Outline of proposed laws**

(a)-(d) The proposed legislation has a list of section heading as follows:

CHAPTER X(A)
TERRORISM
Interpretation
Acts of Terrorism
Acts of Terrorist Behaviour
Assisting Terrorism or Terrorist Behaviour
Assisting Persons or Organisations Engaged in Terrorist Acts or Terrorist Behaviour
Conspiracy
Proscribed groups
Offence to be a member of a proscribed group
Support of a proscribed group.
Display of support for a proscribed group
Fund-raising
Terrorist Hoaxes and False Information
Obligation to disclose property of terrorist groups
Persons and organization to report on a regular basis
Failure to report as required
Seizure and Restraint of Property
Forfeiture of property
Interim Preservation rights
Co-operation with a Foreign State and International Institutions
Requests to Other States
Consent to prosecutions
Offences outside Nauru
Punishments not otherwise provided for
Offences by corporations
Disclosure Protected
Regulations
SCHEDULE
MISCELLANEOUS PROVISIONS

Amendments to banking and other licences
Amendments to the Anti-Money Laundering Act
Terrorism an Offence for Extradition Purposes

The extent to which the law as finally presented to parliament follows this precise table depends upon the results of the final review.

□ **Criminal Code of Queensland**

(a)-(d) The Code as at present in force contains numerous provisions which are considered sufficient to clearly attack and criminalize financing of terrorism thus:

> The broad definition (section 4) of "attempt to commit offences" is extremely wide in its application not merely to beginning to put an intention into effect but it is immaterial that

the intent was not fulfilled for any reason including desisting of his own motion or that it was actually impossible to commit the offence.

The broad description of possible parties to an offence (section 7) includes persons who commit an offence, persons who do any act enabling or abetting another person to commit an offence. Persons who aid in the commission of an offence and persons who counsel or procure the commission of an offence.
If two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another such that an offence is committed they are individually liable for that offence (section 8)

If a person counsels a person to commit an offence the fact that a different offence is committed is immaterial (section 9)

The Code applies to offences committed in Nauru and also to offences committed outside Nauru (section 12, 13 and 14)

Unless a specific law requires the contrary, motive is immaterial (section23)

A warrant may be issued upon a complaint authorising the seizure of any property (including money) suspected of being intended for use in the commission of an offence (section 679)

Any property seized must be taken before a court and is to be retained pending trial (section 652)

The Republic considers that the Code is sufficient at present to ensure that, the many and varied forms which terrorism and acts of terrorism take or may take are sufficient to ensure that terrorism is criminal conduct, even if the expression is not used, such that any such activity falling within the jurisdiction of Nauru can be dealt with by the law. Indeed it is clear that terrorism as it is generally defined is a sub-class of criminal behaviour and is punishable in Nauru whether or not the behaviour is of a political religious or ideological nature or has as its aim intimidation of any person, organisation or State.

□ Freezing of funds

While the Minister may, and has in the past, acted immediately to freeze funds involved in criminal activity held by the Bank of Nauru (which is 100% government owned) it is normal for any such action to be ratified by the Court as the Minister's action is an administrative decision. Subject to the previous remarks, under the law as it presently stands, any application for the freezing of funds or assets in Nauru would require an application to a Magistrate under the Criminal Code for the issue of a warrant to search the records of a bank or other place where such funds or assets are suspected of being held. The grounds for seeking such an order in the first instance is merely a reasonable belief that the funds or assets are or are likely to be used in the commission of an offence. If any funds or property were not capable of being physically taken into custody a further application would have to be made to restrain the holder/custodian of them from dealing with them without the approval of the Court.

- **Existing and proposed laws.**

Existing laws are referred to above. Proposed laws are found in the attached Bill which is under consideration.

- **Do informal banking networks exist?**

No.

- Has Nauru licensed any off-shore banks?

Nauru has licensed banks incorporated in Nauru that operate outside Nauru and are forbidden to operate in Nauru. Extensive secrecy provisions apply to their activities, subject to being over-ridden by Court order for cause – to date no such application has been made by any person or organisation. However their continued operation along with the continuation of the licensing of bank corporations is under review.

Banks incorporated in Nauru are not, by the conditions of their licences, permitted to advertise for deposits from the public in or outside Nauru and are only permitted to engage in intra-group or "in-house" transactions (that is with related corporations). They are not, under the Banking Act (s. 10), permitted to engage in wholesale or retail trade or import or export trade or have any interest in any commercial agricultural industrial or other undertaking except as they obtain that interest as a result of the satisfaction of a debt and then must dispose of the interest at the earliest opportunity.

PARAGRAPH 2

- **Measures enabling compliance**

(a) Nauru has no history of providing any form of support for terrorism. Nauru is an extremely small and relatively homogenous society with little contact with ideologies (political or religious) outside the Judeo-Christian/western tradition. Nauru's predominant concerns are inward-looking with the future of the Island State of overwhelmingly greater interest than the issues that inflame extreme religious and political activity. No government since Independence has given any consideration to supporting extreme or terrorist activities either within Nauru or outside.

(b) Nauru has for many years had a close relationship with Interpol and the Australian Federal Police as well as the Police Force of the State of Victoria in Australia. Nauru has often received information requesting it to be on the watch for criminals and suspected criminals and has assisted wherever it can. Should Nauru ever be in the position of having to provide early warning to other States it is believed that existing police as well as diplomatic relations would enable swift warning to be both given and received.

(c) Nauru maintains very strong control over persons who are permitted to enter the country and denies entry to many classes of person including persons whom it has been informed may have terrorist or other criminal links. From time to time persons who have been given passage by other countries to transit Nauru cause problems for Nauru at their destination as Nauru is invariably blamed for their passage.

(d) Because Nauru does not have a banking system capable of hosting facilities for financing terrorism this is not looked upon as a significant issue. For the reasons already referred to, Nauru does not consider the possibility of preventing persons using Nauru for terrorist planning and the like, to be a matter of immediate concern.

(e) Should persons in Nauru be found to be connected with any aspects of terrorism, they would be apprehended and brought to justice. Any applications for their extradition, if they were not Nauruan persons, would be readily received.

(f) Nauru has always co-operated with foreign police forces in criminal investigations and proceedings and does not see this changing.

(g) Nauru's border controls are very effective and strict control on entry is maintained. Nauru does not have expertise in detecting counterfeit, forged or fraudulent documentation and relies on other countries for early warning or advice.

□ **Prohibition of recruitment**

At present there are no laws prohibiting the recruitment of persons by or for terrorist groups. The issue is dealt with in proposed legislation.

□ Prohibition of brokerage of weapons

There are no such laws as firearms and explosives are prohibited in Nauru except for use by the Police Force and the latter item, by license (import) issued to the Nauru Phosphate Corporation for its mining operation. Any other person or entity dealing with weapons would commit an offence and would be prosecuted under current laws.

□ Early warning

Nauru's Police Force is the first line for giving warnings should they be required and this would be supported through the departments of Immigration and Foreign Affairs.

□ Passports and identity papers are issued only by the passports section of the department of Foreign Affairs and passports are printed for Nauru by foreign security printers. Blank passports are maintained under secure "lock and key" in the department.

□ It is believed that at present none have been gazetted. The issue has not arisen in the past 29 years and has been largely ignored. The issue is one that will be reviewed along with other issues concerning Nauru's international obligations.

□ There are none.

PARAGRAPH 3

□ There are none.

□ Nauru signed the UN Convention for the Suppression of the Financing of Terrorism on November 12, 2001 at the United Nations. Nauru will ratify the Conventions once the proposed legislation refer to above is passed by the Nauru Parliament.

□ With respect to the other conventions on terrorism, Nauru has acceded to the following:

Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1977): accession date: 17 May 1984;

Hague Convention for the Suppression of the Unlawful Seizure of Aircraft (1971): accession date: 17 May 1984

Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963): accession date: 17 May 1984

Nauru anticipates to ratify or accede to, as the case may be, the remaining conventions of terrorism in the very near future following on the exercise to update relevant domestic laws are amended to reflect international norms on such offences.

□ Nauru does not accept asylum seekers. Persons presently on Nauru are, by agreement, under the jurisdiction of the Government of Australia and the United Nations. Should Nauru be requested to accept any of the persons as refugees it would find it difficult to do so whether at the request of Australia or the United Nations.

□ The restrictions upon allowing extradition are

(a) that the offence of which that person is accused or was convicted is an offence of a political character;

(b) that the request for his return, though purporting to be made on account of a relevant offence, is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

Extraditable offences are:

1. Murder of any degree
2. Genocide
3. Manslaughter or culpable homicide
4. An offence against the law relating to abortion
5. Maliciously or wilfully wounding or inflicting grievous bodily harm
6. Assault occasioning actual bodily harm
7. Rape

8. Unlawful sexual intercourse with a female
9. Indecent assault
10. Procuring, or trafficking in, women or young persons for immoral purposes
11. Bigamy
12. Kidnapping, abduction or false imprisonment, or dealing in slaves
13. Stealing, abandoning, exposing or unlawfully detaining a child
14. Bribery
15. Perjury or subornation of perjury or conspiring to defeat the course of justice
16. Arson or fire-raising
17. An offence concerning counterfeit currency
18. An offence against the law relating to forgery
19. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud
20. Burglary, housebreaking or any similar offence
21. Robbery
22. Blackmail or extortion by means of threats or by abuse of authority
23. An offence against bankruptcy law or corporation law
24. Malicious or wilful damage to property
25. An act done with the intention of endangering a vehicle, vessel or aircraft
26. An offence against the law relating to dangerous drugs or narcotics
27. Piracy
28. Revolt against the authority of the master of a ship or the commander of an aircraft
29. Hi-jacking aircraft
30. Money laundering

PARAGRAPH 4

□ Addressing concerns

Nauru is considering the ways in which its privacy laws concerning corporations should be dealt with in order to ensure that they are not used as a cover for criminal activity. Other aspects will be dealt with in proposed anti-terrorism laws and the anti-money laundering laws.

OTHER MATTERS

□ Organizational Chart

Two box diagrams are enclosed setting out the current structure of the Government under the Nauru Constitution (diagram 1) and structure of the Secretariats under the Public Service Act (diagram 2). The Constitution allows a minimum of four and a maximum of six members of the Cabinet including the President who shall be the Chairman of the Cabinet. There are six members of the present Cabinet. The seven main ministries are Foreign Affairs, Public Service, Finance, Justice, Health, Education and Public Works. The President holds the portfolios of Foreign Affairs and Public Service.

All matters relating to finance are handled by the Treasury Department which reports to the Minister for Finance. It is envisaged that when the Financial Intelligence Unit and other supervisory bodies are created, they would be placed under the Treasury Department.

The Department of Justice operates as a Secretariat for the Ministry of Justice and handles all legal matters for the Republic. The Secretary for Justice is also the Director of Public Prosecution, and the Registrar of Corporation under the Nauru Corporation Act.

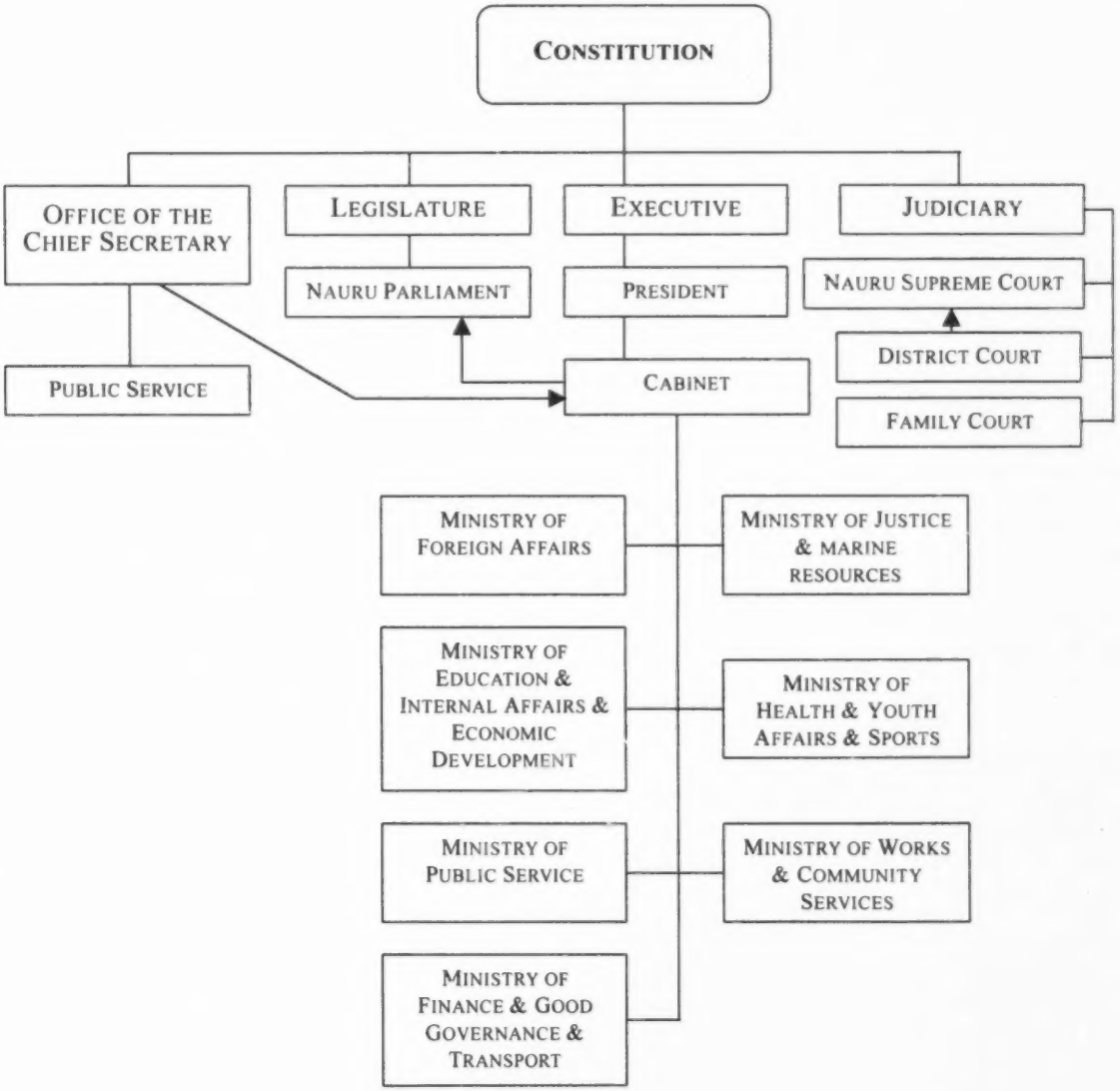
The Police Department is headed by a Director who manages the law enforcement force of the Republic as well as the Immigration and Customs Division.

□ The Commonwealth Secretariat established an Expert Working Group to draft a "model legislation of measures to combat terrorism" to meet the objectives of SC resolution 1373 (2001) and the FATF Special 8 Recommendations on the suppression of the Financing of Terrorism. The Technical Assistant Team (TAT) of the Security Council Counter-Terrorism Committee had provided the Permanent Mission of Nauru to the UN a copy of this draft model and the Report of the Expert Working Group on Legislative and Administrative Measures to Combat Terrorism.

ASSISTANCE

Ambassador Clodumar of the Nauru Permanent Mission to the United Nations has commenced discussion with Ambassador Ward to address these matters.

Structure of the Government of the Republic of Nauru
(Diagram 1)



Administration structure
(Diagram 2)